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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 November 1996, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr. ALVAREZ VITA
(Vice-Chairperson)

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The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRPERSON informed the Committee that he had received a communication from a coalition of non-governmental organizations in the Philippines concerning recent forcible evictions carried out in Manilla during preparations for the meeting of the Asia-Pacific Cooperation Forum. No adequate alternative housing had been provided for some 200,000 persons whose homes had been demolished. The contents of the communication were confirmed by many press reports. A copy of it would be circulated to members of the Committee and the matter would be taken up at an appropriate time.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Portugal (Macau) (E/1990/6/Add.8; E/C.12/1995/LQ.10)

2. At the invitation of the Chairperson, Mr. Costa Oliveira, Ms. Virginia Silva, Ms. Fezas Vital, Ms. Albina Silva, Mr. Loureiro, Mr. Pereira Vidal, Mr. Aleixo, Dr. Silva, Mr. Batista Feio and Mr. Calheïros da Gana (Portugal) took places at the Committee table.

3. The CHAIRPERSON expressed appreciation to Government of Portugal, on behalf of the Committee for having sent such a large delegation and invited the head of the delegation to provide a general introduction to the report concerning Macau (E/1990/6/Add.8).

4. Mr. COSTA OLIVEIRA (Portugal), after introducing the other members of the delegation, said that the operation of the International Covenants on Human Rights had been extended to Macau in 1992. Until then, there had been no real need to do so because the even wider provisions included in the Portuguese Constitution had applied. However, when in 1991 it had become clear that those provisions would cease to have effect in Macau after it became a Special Administrative Region of the People's Republic of China in 1999, the Government of Portugal had started talks with the Government of China with a view to obtaining for Macau similar arrangements to those that would be in force for Hong Kong. An agreement had finally been reached, and its terms had been notified to the Secretary-General of the United Nations in 1993. Under that agreement, Portugal had undertaken to extend the operation of both International Covenants to Macau, and China had agreed to continue to apply them beyond 1999.

5. The report before the Committee had had to be produced in a very short period and there had been little time to consult local organizations. Subsequently, however, consultations had been held with about 200 organizations in Macau, which had provided some very relevant information that was included in the writen replies to the Committee's list of issues (E/C.12/1995/LQ.10).

6. A considerable effort had been made to expand the scope of the economic, social and cultural rights enjoyed by Macau residents. Macau had shared in the boom experienced by East Asia over the past decade and had undergone substantial economic development. Up to 1990 the increased government revenues that had resulted had been invested largely in new infrastructure, with the result that a new airport, a new harbour and other basic facilities had been built. Since then a major effort had been made to raise the economic, social and cultural level of the population through the provision of free basic education, pensions and other benefits. His delegation viewed the current meeting of the Committee as an historic occasion and would be more than willing to answer any questions put by members and to welcome them to Macau.

7. Mr. GRISSA asked whether there were ethnic Chinese holding Portuguese nationality and, if so, what nationality they would have after Macau reverted to China.

8. Mr. RATTRAY thanked the Portuguese Government for sending such a large delegation. He was, however, surprised that no person of Chinese ethnicity was included, especially since ethnic Chinese accounted for 95 per cent of Macau's population. He asked how the provisions of the Covenant, particularly those relating to reporting, would be implemented after Macau was absorbed by China in 1999, and whether the precepts of the Covenant had been embodied in Macau law.

9. Mr. ALVAREZ VITA said that he would also like to know how far the provisions of the Covenant had been incorporated into Macau law.

10. Mr. KOUZNETSOV said that it would be helpful if in their replies the representatives of Portugal could bear in mind that in the case of Macau, as in that of Hong Kong, the Committee was especially interested to know what the position would be after the territory reverted to China. In particular, it would like to be informed as to what was meant by "Special Administrative Region", what Macau's relationship with China would be, and whether Macau would continue to have any relationship with Portugal.

11. Mr. COSTA OLIVEIRA (Portugal) replied that the nationality issue was very complicated. Some 67.6 per cent of the population of Macau had Chinese nationality, and some 28.5 per cent had Portuguese nationality. Thus, the nationality figures did not reflect the Territory's ethnic composition, since a significant number of the 95 per cent of the population that were ethnic Chinese were Portuguese nationals because they had been born in Macau before 1981, at a time when all persons born in Macau had been considered to be Portuguese. A problem would arise in 1999 because, whereas Portuguese law recognized dual nationality, Chinese law did not. His Government had been holding talks with the Government of China with a view to solving the problem of the approximately 100,000 Macau residents who held Portuguese nationality, whom Portugal would still consider to be Portuguese. So far China had agreed to regard their passports as valid for travel purposes only but for nothing else. Portugal was anxious that they should be given the option of having either Portuguese or Chinese citizenship, without being forced to become Chinese nationals. Fortunately, unlike the situation in Hong Kong, there were not many stateless persons in Macau.

12. Regarding Mr. Rattray's comment on the ethnic composition of Portugal's delegation, his Government had tried to arrange for the most qualified officials to come to the meeting. The written replies to issues Nos. 6 and 7 on the list of issues showed that a sufficient number of senior posts in Macau were occupied by ethnic Chinese. In any event, the criterion used for employment was not citizenship but residence, making an individual's ethnic background irrelevant.

13. The question as to how the Covenant, including its provisions for reporting, would be implemented after 1999 was a very delicate point. His Government had not extended the operation of the International Covenants on Human Rights unilaterally but had initiated talks with the Government of China to see whether it wanted to make any reservations or restrictions. The only restrictions which China had wanted were those notified to the United Nations in 1993 and incorporated in Portuguese legislation. Consequently, there was no reason to exclude the possibility of periodic reporting beyond 1999. After that year Portugal would continue to have a close relationship with China, particularly regarding the autonomy of Macau and the implementation of the Sino-Portuguese Joint Declaration. His Government had informed the Government of China of its position and was awaiting a response.

14. Almost all the precepts contained in the Covenant had been implemented and developed in Macau legislation. Moreover, under the Portuguese Constitution, public international treaty law prevailed over domestic law, and the same principle obtained in China.

15. Mr. ALVAREZ VITA asked whether the Covenant had been published in the Macau Official Gazette. He also wondered whether the delegation's presence before the Committee might not be viewed as a purely administrative act. Like Mr. Rattray, he was concerned that there should be continued compliance with international obligations after the transition, and asked whether there had been any further developments since the submission of the report.

16. Mr. TEXIER congratulated Portugal on having sent so large a delegation, thereby indicating the seriousness with which the Government perceived its obligations under the Covenant. The precedents established by future relations between Portugal and Macau and between the United Kingdom and Hong Kong would prove of particular significance to international law since neither territory would constitute an independent State and both would be transferred from the administration of States parties to a State that was not a party to the Covenant. The Committee had received no assurance that the People's Republic of China would continue to meet reporting obligations for Macau. China must therefore be urged to ratify the Covenant.

17. Mrs. JIMENEZ BUTRAGUEÑO observed that non-governmental organizations (NGOs) in Macau did not seem as combative as their Hong Kong counterparts. Was it that NGOs were accorded less freedom in Macau? The Committee would have appreciated the participation of NGOs in the reporting process.

18. Mr. AHMED, congratulating the State party on the quality of its submissions, observed that Macau seemed to be in better condition than Hong Kong. He would like to know whether citizens of Chinese ethnic origin holding Portuguese passports would continue to be allowed to travel freely to Portugal and settle there after 1999 if they did not wish to become Chinese

citizens. The United Kingdom authorities appeared to consider citizens of Hong Kong to be second-class citizens and were not necessarily prepared to grant them visas.

19. Annex 1 of the Sino-Portuguese Joint Declaration stated that "international agreements to which the People's Republic of China is not a party but which are implemented in Macau may remain implemented in the Macau Special Administrative Region". Did that mean that China had implicitly agreed to continue to implement the Covenants in Macau, or did use of the word "may" rather than "shall" indicate a doubt as to their willingness to do so? Why had Portugal not pressed for the word "shall" to be included?

20. Mr. WIMER ZAMBRANO commented that the nature of the legal relationship between Macau and United Nations bodies after transition was indeed crucial. It was significant that the delegation apparently consisted solely of residents of Macau. How did the delegation view the nature of the transition, as well as the closely related matter of Macau's future political, administrative and legal relations both with Portugal and with China?

21. Mr. COSTA OLIVEIRA (Portugal), responding firstly to Mr. Kouznetsov, explained that one of the main principles embodied in the Joint Declaration and reiterated in the Basic Law of the future Macau Special Administrative Region was the principle of automatic continuity of the existing legal system after 1999. Portugal thus believed that there was no need for an additional act recognizing the legal system.

22. The "Special Administrative Region" (SAR) was a new entity that had been devised by China. It would possess a high degree of autonomy in all domains, including a wide range of legislative and executive powers, as well as autonomy in respect of the courts. The only exceptions would be defence, external relations and other matters relating to the exercise of sovereignty. China considered SARs to be akin to provincial regions, but with extra powers and answerable only to the central authorities in Beijing. The second chapter of the Basic Law explained the relationship in greater detail, and those particular stipulations were relatively unambiguous.

23. Concerning Mr. Wimer Zambrano's query as to the current relations between Macau and Portugal, he said that ever since 1976, and well before discussions on the Macau issue were initiated with China, Macau had been considered under the Portuguese Constitution not as an ordinary colony, but rather as a Chinese territory temporarily administrated by Portugal. The Government recognized the importance of preparing the people and institutions of Macau for the inevitable transition. Long before the signature of the Sino-Portuguese Joint Declaration, numerous local reforms had been implemented. Although the Organic Statute of Macau, approved in 1976, was based on colonial statutes, it had accorded unprecedented autonomy to Macau. The most recent of the reforms had been implemented in July 1996. Since 1976, two thirds of the members of the Legislative Assembly had been locally elected, and only one third appointed by the Governor (admittedly a remnant of the colonial system). Although the constitutional law defined Macau as being based on a colonial system, in reality it enjoyed a much greater degree of executive and other autonomy. Any limitations arose from the Joint Declaration rather than Lisbon. Macau had also been accorded a wide range of legislative powers, although since it was not a State and consequently lacked

a head of State, it was unable to grant amnesties. The Portuguese Constitutional Court in Lisbon would continue to operate until 1999, but most legal matters were already managed by the Appeal Court in Macau.

24. From December 1999, China would assume full sovereignty. Portugal's responsibilities would thus be significantly decreased, although obligations arising from international and other bilateral agreements such as the Joint Declaration would continue to be respected. As a matter of principle, all bilateral agreements were deposited with the Secretary-General of the United Nations and relevant agencies, including agreements concerning such matters as civil aviation. Dialogue with the People's Republic of China had proved highly constructive, even on the most sensitive of issues, and the transition could thus be viewed in a positive light. It remained to be seen whether the stipulations in the Joint Declaration would be fully applied, but his delegation had no reason to believe that China would not meet its obligations.

25. Responding to Mr. Alvarez Vita, he said that the Covenant had actually been published in the Macau Official Gazette on 31 December 1992, when Portugal had passed a resolution approving ratification of the Covenant by Macau. As for the presence of his delegation and the question of whether that constituted an "administrative act", he wished to stress that the closest attention had been paid to the implementation of human rights in Macau and that Portugal did not possess significant economic interests in either Macau or China. The delegation's presence simply reflected Portugal's unequivocal commitment to the continuation of constructive dialogue with the Committee.

26. Mr. ALVAREZ VITA indicated that his question had related purely to international law and had not concerned economic interests of any kind.

27. Mr. COSTA OLIVEIRA (Portugal), proceeding to answer Mrs. Jimenez Butragueño's question, explained that the main reason why NGOs in Macau were not as militant as those in Hong Kong was that the population of Macau lacked a sense of belonging; approximately 40 per cent had been resident in Macau for only 15 years, and two thirds had arrived within the past 30 years. Many had relatives on mainland China, or intended eventually to move to the United States of America or Canada. Although the people of Macau were exposed to the same cultural influences as the people in Hong Kong, it was important to realize that their attitudes differed. The delegation did not mean to claim that NGOs were in agreement with all the information supplied to the Committee, but every effort had been made to ensure that the information was as accurate as possible.

28. Mrs. JIMENEZ BUTRAGUEÑO expressed her satisfaction with the delegation's response, but wished to stress the importance of making reports available to all NGOs.

29. Mr. COSTA OLIVEIRA (Portugal) said that there had been extensive popularization both of the law and of human rights. The Government had consulted some 200 NGOs and had made the reports available in Portuguese, Chinese and English, but had obtained little relevant feedback. As to Mr. Ahmed's query, dual nationals would continue to enjoy the right to travel

to Portugal and to settle there at any time. There were no varying degrees of nationality, and Portuguese nationality would not be withdrawn under any circumstances.

30. Regarding the complex legal issues arising from the Joint Declaration, he wished to stress that all laws would remain basically intact. His personal view was that, although the principles set forth in the international instruments would undoubtedly continue to be protected, the matter fell under "external relations" and would thus inevitably be regulated by the central Chinese authorities. Portugal would have to respect the autonomy of the Macau Special Administrative Region. When China had signed the Joint Declaration, it had not been conversant with the international agreements applying to Macau. The Joint Declaration had thus been drafted with caution since Portugal and China did not share the same reservations concerning certain provisions of the Covenant. Portugal could not force China to accept a clause of automatic continuity, but China could continue to apply to Macau those instruments it had not itself ratified. The door had been left open, but he could not speak for China. Article 40 of the Basic Law did stipulate that the provisions of the Covenants applicable to Macau would continue to be implemented in the Macau Special Administrative Region.

31. Much pressure had been exerted on the People's Republic of China to ensure symmetrical treatment for the residents of Hong Kong and Macau. In many areas, human rights were actually better protected in Macau.

32. Referring to Mr. Texier's concern about the implementation of the Covenant after 1999, he wished to point out that the Portuguese authorities had informed the Chinese Government of its reporting obligations under various international instruments, including the Covenant, but was still awaiting its response. He would none the less convey the Committee's concern to the Sino-Portuguese Liaison Group.

33. Mr. Alvarez Vita (Vice-Chairperson) took the Chair.

34. Mr. ADEKUOYE noted that persons holding dual nationality would be allowed entry into Portugal without restrictions; however, what of entry into other countries in the European Union? Furthermore, would those citizens enjoy the same rights as other members of the European Union, including the right to free movement of labour and the right of settlement?

35. Mr. COSTA OLIVEIRA (Portugal) said that he saw no reason why persons who, irrespective of their ethnic background, were to all intents and purposes full Portuguese citizens should not enjoy the same rights as citizens of other States members of the European Union. To the best of his knowledge, when such persons travelled to destinations other than Portugal in the European Union, they were not subject to visa requirements. Thus, for as long as Portugal guaranteed them nationality and citizenship, no legal restrictions would be imposed.

36. The CHAIRPERSON invited the Committee to refer to the list of issues to be taken up in connection with the consideration of the report (E/C.12/1995/LQ.10).

I. General information

A. Legal framework within which human rights are protected

37. Mr. WIMER ZAMBRANO sought an explanation of the significant rise in the population of Macau in recent years. Clearly the incentive for Chinese nationals migrating to Macau was not to acquire foreign citizenship. Was the attraction for them perhaps the prospect of greater economic prosperity?

38. Mr. CEAUSU said that the information in section I.D of the report was satisfactory and indicated that the general legal framework within which human rights were protected in Macau seemed to be in line with that of Portugal itself. His only query related to the functions of the Public Information and Assistance Centre (para. 45). How did the Centre deal with complaints lodged by citizens regarding acts by public services? Was it empowered to suspend or annul administrative decisions taken in that connection? Or was it merely intended to provide information or guidance with a view to conciliating the parties concerned?

39. Ms. TAYA said that, in order to maintain the current standard of living and protection of human rights in Macau, a population influx from mainland China must be avoided, and that would require some tightening of immigration policy. However, such restrictions could result in the infringement of certain human rights, including the unity of the family, as had occurred in the case of Hong Kong. How did the Portuguese authorities envisage resolving that dilemma?

40. Mr. GRISSA asked for further information on the sector of the population which was neither Chinese nor Portuguese in origin and were generally migrant workers. Of what nationality were they? Were they legal residents and, if not, what legal measures were being taken to ensure that their rights were protected?

41. Mrs. JIMENEZ BUTRAGUEÑO requested further details on judgements handed down in cases of violation of economic, social and cultural rights, in order to supplement the information given in paragraphs 45 to 51 of the report. Furthermore, she shared the concerns expressed by Ms. Taya regarding the problems faced by families when strict immigration policies were applied.

42. Mr. COSTA OLIVEIRA (Portugal) confirmed that the reasons for migration towards Macau in recent years were mainly economic: people sought greater opportunities or a better standard of living. In the 1960s and 1970s many Chinese nationals from a neighbouring province in the People's Republic of China had entered the Territory illegally but had eventually been granted the right to work and reside there. In subsequent years, with stricter immigration policies and border controls, the situation of certain illegal immigrants had been regularized for a variety of reasons, including to reunite families. Now, however, there was great public pressure not to allow further immigration so as to avoid any deterioration in the quality of life. It was worthwhile noting that the peninsula of Macau had the highest population

density in the world. Other immigrants had arrived in Macau while awaiting permission to join members of their family or reach other countries of settlement. As far as he knew, people did not migrate to Macau for legal reasons.

43. Mr. PEREIRA VIDAL (Portugal), replying to Mr. Ceausu's query, said that the Public Information and Assistance Centre had a broad range of functions. Apart from complaints, the Centre dealt with thousands of requests for assistance relating to administrative documents and procedures in general. It also provided a legal counselling service on citizens' rights and queries regarding the administration for those residents who did not have the means to engage the services of a lawyer. As to the system of handling complaints, it might be referred to as an "internal procedure". Where a complaint was deemed well-founded, the Centre would bring the matter to the attention of the relevant government department. It did not have power to adjudicate, that being the prerogative of the administrative courts.

44. Mr. COSTA OLIVEIRA (Portugal), turning his attention to Ms. Taya's remarks, said that it was indeed difficult to reconcile the need for strict immigration policies and the protection of human rights. In the past, the policy of regularizing the situation of some illegal immigrants so as to allow them to be united with members of their families had in many cases merely led to further illegal immigration. It was very difficult for the local authorities to quantify the consequences of pursuing such a policy. Thus the emphasis was currently on restricting immigration and that trend was likely to continue. The only difference in future would be that, under article 22 of the Basic Law, responsibility for allowing the entry of people from mainland China would lie solely with the central authorities, although the views of the local authorities would be taken into account. For social and economic reasons, it was hoped to keep a tight rein on immigration since the local population was very much opposed to the idea of any further increase in the population.

45. Replying to Mr. Grissa's question, he said that the majority of migrant workers came from China, the next two large groups being Filipinos and Thais. He would deal with the other aspects of Mr. Grissa's question in his reply to issue No. 12. As to Mrs. Jimenez Butragueño's request concerning judgements handed down in cases of violations of economic, social and cultural rights, he would endeavour to make the information available to the Committee at a later point.

46. Mrs. JIMENEZ BUTRAGUEÑO, speaking on the subject of immigration, inquired whether the delegation might be interested in the case of a child from Hong Kong who had finally been reunited with his family thanks to the goodwill of the Governments concerned.

47. The CHAIRPERSON suggested that the information could be given directly to the Portuguese delegation after the meeting.

B. Information and publicity concerning rights set forth in the Covenant

48. Mr. THAPALIA welcomed the information provided on the functions and powers of the Public Information and Assistance Centre, but wondered whether

the Portuguese authorities intended to set up a human rights commission to create greater awareness about human rights and investigate violations.

49. Mrs. BONOAN-DANDAN said that Portugal's treatment of the issue of information and publicity was rather vague. She would welcome clarification as to how far the peoples of Macau were aware of their economic, social and cultural rights, and the obligations of the Portuguese Government under the Covenant. Furthermore, very little statistical information had been provided, particularly with regard to food and an adequate standard of living. How did the Government therefore gauge the progress achieved in the realization of economic, social and cultural rights? Lastly, what kinds of non-governmental organization were active in Macau and how did they cooperate with the Portuguese authorities? What were the main concerns of the public at large regarding the transfer of the territory to China?

50. Mr. COSTA OLIVEIRA (Portugal) said, in reply to Mr. Thapalia, that there were no plans to set up a human rights commission, as there were numerous committees and other advisory bodies concerned with every aspect of Macau life. Such bodies effectively worked as pressure groups, thus lessening the need for a separate human rights commission.

51. With regard to Mrs. Bonoan-Dandan's questions, the population had been encouraged to be aware that it had substantive rights; the Government had focused less on the existence of international obligations. Macau was, however, rich in associations set up by special interest groups, whether professional, social or cultural, which were active in contesting elections and taking initiatives. Such groups were conversant with the Covenant and were not backward in requesting information. As for the adequacy of statistics on the standard of living, he wished to defer his reply until the Committee came to consider article 11, when he would be able to give the results of the survey on adequate food.

52. Regarding non-governmental organizations, few were directly concerned with human rights. When White Papers were published, reactions were canvassed but they were more likely to come from the associations to which he had referred, which usually focused on specific issues. As to whether the population at large was worried about the hand-over to China in 1999, he thought that there was less concern in Macau than in Hong Kong. There were still some years to go and it would be possible to see how the situation developed in Hong Kong; also, perhaps, much of the population might choose not to stay after 1999.

II. Issues relating to the general provisions of the Covenant (arts. 1-5)

Article 2.2: Non-discrimination

53. The CHAIRPERSON, speaking as a member of the Committee, asked whether there remained any descendants of the first Portuguese settlers in Macau and whether they had retained their racial purity or their language. If so, he wondered what position they held in society and whether they discriminated against those of mixed blood, as was the case in parts of Latin America.

54. Mr. CEAUSU noted that, according to an article in Asian Survey in 1991, Macau had a tentative timetable for appointing local people to leadership posts in the civil service, with the aim of 70 per cent "localization" by 1995, 80 per cent by 1997 and 100 per cent by 1999. The delegation's replies seemed to suggest that there was no such timetable. What was the actual situation?

55. Mr. COSTA OLIVEIRA (Portugal) said that descendants of the first settlers existed, but none were racially pure. Known as the "Macaunese community", they were all products of intermarriage with local people, Chinese or Malays. Their local dialect - now almost extinct - was based on Portuguese Creole. They had a strong sense of community, but they were not an elite in any political or cultural sense. Many held modest positions. It was true that many could also be found in the upper reaches of the civil service, but that was because they had the advantage of being bilingual. The localization of the civil service had been delayed because members of the Macaunese community were reluctant to be considered Chinese, even though their careers would run more smoothly if they were so considered.

56. Ms. Virginia SILVA (Portugal) said that Macau had a plan rather than a timetable for the localization of civil service posts, with leadership posts the first to be filled. By 30 September 1997, all heads of section, division and department would be local people. She noted, however, that the term "local" extended to anyone who declared an intention to stay in Macau after 1999 and who was bilingual. The current proportion of local people in leadership posts - of which there were some 350, out of a total 17,000 posts in the civil service - was 76 per cent, a commendable figure given that three years remained to complete the process.

57. Mr. COSTA OLIVEIRA (Portugal) said that, while there was no detailed timetable relating to specific posts, Macau did have targets and deadlines. He could also confirm that "local" did not imply any particular ethnic origin, nor did it even mean that people had to have been born in Macau. The only prerequisite was that they should be bilingual. Thus, most were Chinese but some were Macaunese and a few were Portuguese who had been resident in Macau for decades.

58. Mr. WIMER ZAMBRANO asked what would become of the civil servants that were to be replaced and how they would be selected.

59. Mr. GRISSA asked whether such civil servants would be forced to take early retirement, be dismissed or be repatriated if they were not local. He also wondered how the status of the Macaunese community would be reconciled with the fact that China did not recognize dual nationality.

60. Mrs. JIMENEZ BUTRAGUEÑO inquired whether dismissed civil servants would receive compensation.

61. Mr. RATTRAY said that he would like to know whether localization corresponding to that in the public sector was envisaged in the private sector.

The meeting rose at 1 p.m.